

EAST KENTUCKY POWER COOPERATIVE, INC.
PSC CASES 2003-00030 & 2000-00079
SUPPLEMENTAL REQUEST RESPONSE
ATTORNEY GENERAL'S REQUEST
DATED JULY 17, 2003

FILED 7/28/03



EAST KENTUCKY POWER COOPERATIVE

RECEIVED

JUL 27 2003

PUBLIC SERVICE
COMMISSION

July 28, 2003

HAND DELIVERED

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: Case No. 2003-00030
Case No. 2000-00079

Dear Mr. Dorman:

Please find enclosed for filing with the Commission in the above-referenced cases an original and five copies of the responses of East Kentucky Power Cooperative, Inc. to the Information Requests of the Commission Staff and the Attorney General dated July 17, 2003.

Very truly yours,

Charles A. Lile
Senior Corporate Counsel

Enclosures

Cc: Parties of Record

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

AN INVESTIGATION OF EAST KENTUCKY)	
POWER COOPERATIVE, INC.'S NEED)	
FOR THE GILBERT UNIT AND THE)	CASE NO. 2003-00030
KENTUCKY PIONEER ENERGY, LLC)	
PURCHASE POWER AGREEMENT)	

THE APPLICATION OF EAST KENTUCKY)	
POWER COOPERATIVE, INC. FOR)	CASE NO. 2000-00079
APPROVAL TO PURCHASE POWER)	
AGREEMENT)	

**RESPONSES OF EAST KENTUCKY POWER COOPERATIVE, INC.
TO ATTORNEY GENERAL DATA REQUESTS DATED JULY 17, 2003**

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2003-00030 / 2000-00079

INFORMATION REQUEST RESPONSE

ATTORNEY GENERAL DATA REQUEST DATED JULY 17, 2003

REQUEST NO. 1

RESPONDING PERSON: Ron Brown

Request 1: The contract to purchase power from ES&TS was cancelled due to contract provisions calling for financial security for EKPC with regard to a start-up date.

Request 1a: Please explain why the KPE contract doesn't have similar financial security for EKPC.

Response 1a: During contract negotiations, KPE would not agree to providing such guarantees and EKPC elected to proceed with the project without performance guarantees due to the very low price for the power. Although no details were provided, it was the position of KPE that any such guarantees would have been difficult to obtain and would have resulted in significantly increased costs for power to EKPC. It is noted that the ES&TS transaction failed when ES&TS was not able to obtain the required performance security for a much smaller project.

Request 1b: It would seem that financial security would be more important for a 540 MW purchase than a 105 MW purchase. If you disagree, please explain the basis for the disagreement in detail.

Response 1b: EKPC agrees that performance security is important for a project of that size, and it will be an issue in any future negotiations with KPE.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2003-00030 / 2000-00079

INFORMATION REQUEST RESPONSE

ATTORNEY GENERAL DATA REQUEST DATED JULY 17, 2003

REQUEST NO. 2

RESPONDING PERSON: Ron Brown

Request 2: Please provide the calculations and back-up assumption(s) behind the penalty fees in Section 6.1 and 6.2 of the ES&TS contract.

Response 2: The ES&TS contract was negotiated over three years ago, and has subsequently been cancelled. As a result, minimal files have been retained and the specific calculations that were made at that time cannot be found in those records. However, the basis for the determination of the liquidated damages in the cited sections was to “make EKPC whole” for any delays in the project or future defaults. In general, the amount of liquidated damages was based on the estimated cost of any capacity and energy that would have to be purchased as a result of possible ES&TS non-performance, less the amount that EKPC would normally have paid ES&TS under the contract. The liquidated damages were to be guaranteed by a performance bond, insurance policy, or other financial instrument which was to be obtained by ES&TS.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2003-00030 / 2000-00079

INFORMATION REQUEST RESPONSE

ATTORNEY GENERAL DATA REQUEST DATED JULY 17, 2003

REQUEST NO. 3

RESPONDING PERSON: Dave Drake

Request 3: Why doesn't the KPE contract reimburse EKPC for additional costs associated with failure to bring the plant on-line by the date included in the contract?

Response 3: The Power Purchase Agreement ("PPA") would place KPE in breach for any unexcused failure to meet the specified Commercial Operation date. However, delays in the project which are beyond the control of KPE would not be a basis for a default, although they may allow EKPC to terminate the agreement.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2003-00030 / 2000-00079

INFORMATION REQUEST RESPONSE

ATTORNEY GENERAL DATA REQUEST DATED JULY 17, 2003

REQUEST NO. 4

RESPONDING PERSON: Dave Eames

Request 4: Please provide a detailed cost estimate of all cost to EKPC to date associated with failure by Global Energy to bring the KPE project on-line by the time included in the contract. Please include and separately identify the costs of developing new generation plans without KPE, the cost of soliciting and processing bids for replacement power, and the extra cost of power due to the price of replacement power being more than KPE power costs.

Response 4: There was no incremental cost to EKPC associated with developing new generation plans or soliciting and processing bids for replacement power due to the KPE project since these activities were carried out by existing staff as part of their normal work duties. The primary replacement power for power purchased from KPE would be from the Gilbert unit. At a 90% capacity factor, the Gilbert unit would generate approximately 176,000 MWh per month, on average. If the differential cost of Gilbert (all in cost) compared to KPE power is \$10.00/MWh, then the replacement power cost would be \$1,760,000/month.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2003-00030 / 2000-00079

INFORMATION REQUEST RESPONSE

ATTORNEY GENERAL DATA REQUEST DATED JULY 17, 2003

REQUEST NO. 5

RESPONDING PERSON: Dave Eames

Request 5: Please provide an estimate of all future costs EKPC expects to incur associated with projected future delays in bringing the KPE project on-line. Please include and separately identify the costs of developing new generation plans without KPE, the cost of soliciting and processing bids for replacement power, and the extra cost of power due to the price of replacement power being more than KPE power costs.

Response 5: There was no incremental cost to EKPC associated with developing new generation plans or soliciting and processing bids for replacement power due to the KPE project since these activities were carried out by existing staff as part of their normal work duties. Exhibit I of David Eames' prepared testimony in this case filed July 7 shows a comparison of EKPC's projected revenue requirements for the IRP plan and an adjusted IRP plan including KPE beginning in 2008. The difference in the present value of revenue requirements for the period shown reflects the extra cost of power due to replacing power from the KPE purchase.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2003-00030 / 2000-00079

INFORMATION REQUEST RESPONSE

ATTORNEY GENERAL DATA REQUEST DATED JULY 17, 2003

REQUEST NO. 6

RESPONDING PERSON: Dave Eames

Request 6: If the KPE project fails to come on-line in time, when will the planning need to begin for the CT unit projected for 2006?

Response 6: The planning associated with the addition of peaking capacity in 2006, for which EKPC has used a CT as a proxy, is underway. RFP No. 2002-02 requested proposals that included the 2006 addition of capacity. Discussions are ongoing with a bidder from the RFP regarding this capacity addition in 2006.

EAST KENTUCKY POWER COOPERATIVE, INC.

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INFORMATION REQUEST RESPONSE

ATTORNEY GENERAL DATA REQUEST DATED JULY 17, 2003

REQUEST NO. 7

RESPONDING PERSON: Dave Eames

Request 7: If the KPE project fails to come on-line in time, when will the planning need to begin for the two CT units projected for 2007?

Response 7: The planning associated with the addition of peaking capacity in 2007 is in the preliminary stages. EKPC's 2003 Integrated Resource Plan identified the need for additional peaking capacity in 2007. Preliminary discussions are underway concerning siting and potential capacity alternatives.

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REQUEST NO. 8

RESPONDING PERSON: Dave Drake

Request 8: Does EKPC believe that the authorization given by the Commission to enter into the contract with KPE is open ended, and that it doesn't matter when the project is actually built? Please explain your answer.

Response 8: EKPC has consistently stated that it will seek Commission review and approval of any significant changes in the project which require an amendment to the PPA. A change in the commercial operation date would certainly be such a change.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2003-00030 / 2000-00079

INFORMATION REQUEST RESPONSE

ATTORNEY GENERAL DATA REQUEST DATED JULY 17, 2003

REQUEST NO. 9

RESPONDING PERSON: Dave Drake

Request 9: Assuming that the Commission finds need for the KPE power, and authorizes EKPC to renegotiate the contract with KPE, would EKPC object to the Commission putting a time limit on the approval that would require that EKPC would come back to the Commission if financial closure is not achieved by a date certain?

Response 9: EKPC would not object to reasonable limitations of that kind in such an approval by the Commission.

EAST KENTUCKY POWER COOPERATIVE, INC.

PSC CASE NO. 2003-00030 / 2000-00079

INFORMATION REQUEST RESPONSE

ATTORNEY GENERAL DATA REQUEST DATED JULY 17, 2003

REQUEST NO. 10

RESPONDING PERSON: Dave Drake

Request 10: Assuming that the Commission finds need for the KPE power and authorizes EKPC to renegotiate the contract with KPE, would EKPC object to the Commission requiring that penalties be included in the contract should the KPE project fail to come on-line by the date in the contract?

Response 10: EKPC would need to evaluate the details of any such requirement by the Commission, but does not reject the concept of liquidated damages for project delays in any renegotiation of the PPA.